ways affording evidence against him.' It would seem, therefore, that such an investigation as that made in the case before us is without authority as against defendant's objection, and the receipt of the evidence was error, on the ground that it was the result of the invasion of defendant's constitutional right, impliedly guaranteed under the provision of our constitution as to due process of law, not to criminate himself."

The court further held that the proceeding was in violation of the constitutional provision securing to the people the right "to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches," and *Boyd* v. *United States*, 116 U. S. 616, 6 Sup. Ct. Rep. 524, 29 L. ed. 746, was commented and relied upon, and *Newberry* v. *Carpenter*, 107 Mich. 567, 65 N. W. 530, 31 L. R. A. 163, 61 Am. St. Rep. 346, cited with reference to the effect of similar provisions in state constitutions. Proceeding, the court said: "There are, of course, limitations as to immunity from search and seizure for the purpose of securing evidence of crime. It is well settled that, when one charged with an offense is arrested, the officers may, without further legal procedure, seize weapons with which the crime has been committed, property which has been obtained by means of a criminal act, or articles which may give a clew to the commission of the crime or identification of the criminal. *Chastang* v. *State*, 83 Ala. 29, 3 South. 304; *Bank* v. *McLeod*, 65 Iowa 665, 19 N. W. 329, 22 N. W. 919, 54 Am. Rep. 36; *Reifsnyder* v. *Lee*, 44 Iowa 101, 24 Am. Rep. 733. And the officer making such search may testify as to any facts, even though criminating, which were discovered thereby. *Starchman* v. *State*, 62 Ark. 538, 36 S. W. 940; *Shields* v. *State*, 104 Ala. 35, 16 South. 85, 53 Am. St. Rep. 17; *State* v. *Flynn*, 36 N. H. 64. But 'a party to a suit can gain nothing by virtue of violence under the pretence of process, nor will a fraudulent or unlawful use of process be sanctioned by the courts. In such cases parties will be restored to the rights and position they possessed and occupied before they were deprived thereof by the fraud, violence or abuse of legal process,' *Reifsnyder* v. *Lee*, *supra* . . . None of the exceptions recognized cover such a case as we have before us. The search was for the mere purpose of securing evidence by an invasion of the private person of the defendant, and we think there is no consideration whatever which will justify it."

ATTACHMENT JUDGMENTS—ALIAS EXECUTIONS—ABANDONMENT.—May a second execution issue on a judgment obtained in an action commenced by an attachment in which the defendant has not appeared or been personally served? A negative answer was given to this question by the supreme court of Illinois on appeal by the plaintiff from an order quashing the second writ on motion of the defendant specially appearing for that purpose. The property attached was real estate. The first execution commanded the sheriff to cause the judgments and costs to be made out of the property attached. His return to it was: "The within execution returned no part satisfied this 15th day of August, A. D. 1899." The alias, issued April 9th, 1900, was the same in form as the first, except the commencement, "We again command you." The The court said: "The practice act expressly provides for an alias summons or capias, but does not provide for a special execution, and a special execution is unknown to the common law. . . . A return of such process not satis-

fied, in effect, is a release of the property seized under the attachment writ, and an abandonment of the attachment suit." *Keeley Brewing Co.* v. *Carr* (Oct. 25 1902), 198 Ill. —, 64 N. E. 1030.

Titles obtained by execution sales in such proceedings are already sufficiently uncertain; and such decisions, unless unavoidable, are to be deplored as increasing the uncertainty which prevents persons bidding at such sales from offering more than a fraction of what the property is worth, thus causing its sacrifice at a time when the finances of the unfortunate debtor demand that the best price should be obtained.

If this decision be justified on the ground that the statute did not authorize a second execution to issue in such cases, and therefore none could issue under any circumstances, it may be observed that when an attaching creditor recently appealed from an order of the lower court ordering the first execution to be returned to give time for a claimant to try his right, which was not asserted till the first execution had issued, this very court held that there was no error in ordering the writ returned. *Jullard* v. *May* (1889), 130 Ill. 87, 22 N. E. 477. It would seem rather hard on the creditor to have his writ peremptorily returned, for no fault of his own, at the end of a costly suit, if the court had no power to issue another or do anything more for him afterward.

As to the power of courts to issue special executions in ordinary actions, without any statute authorizing it, there would seem to be no doubt under the decisions of that or any other state. The greater includes the less. The power to command the sale of any property includes the power to command the sale of specific property. *Rockwell* v. *Jones* (1859), 21 Ill. 279; *Pracht* v. *Pister* (1883), 30 Kan. 568, 1 Pac. 638. Again, the power of the courts to issue successive writs of the same kind on the same judgment, without statutory authority, is equally certain. See Freeman on Executions, § 48. In this respect no distinction has ever been suggested between judgments *in personam* and judgments *in rem*, so far as we are aware, till in this case. It is true that attachment proceedings are purely statutory, and there is no authority for anything which the statute does not give expressly or by implication. But the attachment ends with the judgment, and it would seem that the power to give judgment impliedly includes power to execute it, as is the rule as to all other judgments. *Roberts* v. *Connellee* (1888), 71 Tex. 11, 8 S. W. 626. "When in a suit by attachment the plaintiff obtains a judgment which by existing law is a lien upon the property attached, the lien of the attachment becomes merged in that of the judgment, and the only effect thereafter of the attachment lien upon the property is to preserve the priority thereby acquired, and this priority is maintained and enforced under the judgment by virtue of the execution issued thereon." *Spellman* v. *Chaffee* (1880), 5 Col. 247,256. In the case last quoted it was held, that, by ordering the first execution on the attachment judgment returned, the creditor lost his priority as to the proceeds realized on the sale of the property under an alias execution on his judgment and on executions on similar judgments held by other creditors.

If the decision in *Keeley Brewing Co.* v. *Carr* be justified on the ground that by returning the execution without sale the property and lien on it were abandoned, it is opposed to *VanCamp* v. *Searle* (1895), 147 N. Y. 150, 162, 41 N. E. 427; and *Merchants' Nat. Bank* v. *Greenwood* (1895), 16 Mont. 395,448, 41 Pac. 250; in the first of which the creditor ordered the writ returned to await

the result of a sale under a prior writ; and in the last case had it returned with the endorsement that no property other than that attached could be found, erroneously supposing that would be necessary to enable him to maintain the bill in equity as a creditor, in which suit the objection was made.

One case is found which seems to sustain the holding that by ordering the first execution returned the lien of the attachment judgment was abandoned. While that case was pending the term of the sheriff who levied the attachment had expired. The first execution was given to the new sheriff. Probably the creditor then discovered the cases in which it has been held that the officer who begins executing process must complete it, and that the execution on the attachment judgment must be executed by the old sheriff, though out of office. See *McKay* v. *Harrower* (1858),27 Barb. 463. At all events he ordered the new sheriff to return the writ unsatisfied without making any levy, which was done. A new execution was then taken out and given to the old sheriff, who proceeded under it to sell the attached lumber in his hands. The defendant's assignee thereupon brought an action for the possession of the lumber; and the court held that the new sheriff could and should have executed the first writ, and that by ordering it returned the attaching creditor had abandoned it. *Butler* v. *White* (1879), 25 Minn. 432.

RECENT IMPORTANT DECISIONS

ADMINISTRATOR—DEBT DUE FROM HIM TO THE ESTATE—EFFECT OF ADMINISTRATOR'S INSOLVENCY.—One who was indebted to an intestate, was appointed administrator of his estate. On final accounting, he asked to be discharged without paying the debt, on showing that he was at the time of his appointment, and has since been, entirely insolvent. *Held*, that upon such a showing he was entitled to be discharged without paying the debt. *In re Howell's Estate* (1902),—Neb.—, 92 N. W. Rep. 760.

It was conceded that the Massachusetts rule was to the contrary effect and that certain other states had adopted it. See CROSWELL EX'RS AND ADM'R'S §§ 485, 534. But it was insisted that "the later cases hold that where the administrator or executor is shown to have been insolvent at the time of his appointment, during the incumbency of his office, and at the time of his discharge, his bondsmen are not liable for his individual debt," citing *In re Walker's Estate*, 125 Cal. 242, 57 Pac. 991, 73 Am. St. Rep. 40; *Baucus* v. *Slover*, 89 N. Y. 1, 107 id. 624, 13 N. E. 938; *Keegan* v. *Smith*, 39 N. Y. Supple. 826; *In re Georgi*, 47 N. Y. Supple. 1061; *McCarty* v. *Frazer*, 62 Mo. 263: *Harker* v. *Irick*, 10 N. J. Eq. 269; *Rader* v. *Yeargin*, 85 Tenn. 486, 3 S. W. 178; *State* v. *Gregory*, 119 Ind. 503, 22 N. E. 1; *Condit* v. *Winslow*, 106 Ind. 142, 5 N. E. 751; *Griffith* v. *Chew*, 8 Serg. & R. 17, 11 Am. Dec. 556; *Tarbell* v. *Jewitt*, 129 Mass. 457; *Lyon* v. *Osgood*, 58 Vt. 707, 7 Atl. 5.

AGENCY—ACTION BY UNDISCLOSED PRINCIPAL—ABSTRACTER'S LIABILITY FOR DEFECTIVE ABSTRACT.—Plaintiff desiring to borrow money upon a mortgage upon real estate, applied to a firm of money-loaners, and delivered to them his abstract of title which they were to have corrected to date. The firm sent the abstract in their own names to defendant, an abstracter of title,